

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES HENRY FLOURNOY, P00154293,

Plaintiff,

v.

MARIN COUNTY SHERIFF DEP'T, et al.,

Defendant(s).

Case No. [23-cv-00514-CRB](#) (PR)

ORDER OF DISMISSAL

Plaintiff, a prisoner at the Marin County Jail (MCJ) facing probation revocation proceedings on prior criminal convictions (as well as pretrial proceedings on new criminal charges in Marin County Superior Court and other jurisdictions) and a frequent litigant in federal court, has filed a pro se complaint under 42 U.S.C. § 1983 claiming denial of due process in connection with his placement and retention in “disciplinary isolation” upon his arrival at MCJ in late December 2022 based solely on his pending criminal charges and not on any sort of prison disciplinary violation. ECF No. 1 (Compl.) at 3. Plaintiff raised the same allegations in a prior prisoner complaint, which was dismissed with leave to amend and is still pending. See Flournoy v. Marin County, No. 23-cv-00290-CRB (PR) (N.D. Cal. Apr. 3, 2023) (order of dismissal with leave to amend).

A prisoner complaint that merely repeats pending or previously litigated claims may be considered abusive and dismissed under the authority of 28 U.S.C. § 1915A. Cf. Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (citing Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988)) (duplicative in forma pauperis complaint may be considered abusive and dismissed under 28 U.S.C. § 1915). Because plaintiff raised and is litigating the same allegations and claim raised herein in Flournoy v. Marin County, No. 23-cv-00290-CRB (PR), the instant complaint is deemed duplicative and abusive under § 1915A. That plaintiff adds additional defendants in this

1 later-filed action does not compel a different result. See Bailey, 846 F.2d at 1021 (complaint
2 repeating same allegations asserted in earlier case, even if now filed against new defendants, is
3 subject to dismissal as duplicative).

4 For the foregoing reasons, the complaint is DISMISSED as duplicative under the authority
5 of 28 U.S.C. § 1915A(b) and the clerk is instructed to close the case.

6 **IT IS SO ORDERED.**

7 Dated: April 4, 2023



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9 CHARLES R. BREYER
United States District Judge